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EXAMINER

LUONG, VINH

ART UNIT PAPER NUMBER

3682

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/977,204

Applicant(s)
HAYASHIHARA et al.

Examiner
Luong

Art Unit
3682



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/18/02
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above, claim(s) 6-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10/16/01 is/are a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some* c) ☐ None of:

- ☒ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____.
- ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ | 6) <input type="checkbox"/> Other: |

Vinh T. Luong
Primary Examiner

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1. Applicant's election of the species of Figs. 1 and 2 in Paper No. 5 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse. MPEP § 818.03(a).
2. Claims 6-9 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 5.
3. The incorporation of essential material in the specification by reference to a foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference. The amendment must be accompanied by an affidavit or declaration executed by the applicant, or a practitioner representing the applicant, stating that the amendatory material consists of the same material incorporated by reference in the referencing application. See *In re Hawkins*, 486 F.2d 569, 179 USPQ 157 (CCPA 1973); *In re Hawkins*, 486 F.2d 579, 179 USPQ 163 (CCPA 1973); and *In re Hawkins*, 486 F.2d 577, 179 USPQ 167 (CCPA 1973).
4. The attempt to incorporate subject matter into this application by reference to Japanese Patent Application No. 2000-391310 on page 1 of the specification is improper because it is a foreign application.
5. The drawings are objected to because each part of the invention, such as, (a) the operating surface and the seat in claim 3; and (b) the axis in claim 4 should be designated by a referential numeral or character. A proposed drawing correction or corrected drawings are required in reply to

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the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

6. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed features, such as, the seat in claim 3 and the axis in claim 4 must be shown or the features canceled from the claims. No new matter should be entered.

7. The disclosure is objected to because of the following informalities: each part of the invention, such as, (a) the operating surface and the seat in claim 3; and (b) the axis in claim 4 should be designated by a referential numeral or character. Appropriate correction is required.

8. Claims 1-5 are objected to because of the following informalities: the claims contain typographical or grammatical error, e.g., in claim 1, lines 17-20, the recitation “said positioning device *permitting said first and second members permitting said first and second members to maintain said desired relative position*” should have been “said positioning device permitting said first and second members to maintain said desired relative position.” Appropriate correction is required.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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The term, e.g., "*substantially*" in claim 1 is a relative term which renders the claims indefinite. The term "*substantially*" is not defined by the claims, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear, e.g., which inclined plane is considered to be "*a substantially vertical plane.*"

The recitation, such as, "said pair of guides consist of a pair of straight guides which are positioned such that *extension lines of said straight guides intersect each other*" in claim 2 is inaccurate or misdescriptive because Fig. 2 shows that the extension lines are not extended from the straight guides 32 and 34. The lines which pass the midpoints of the lengths of the guides 32 and 34 are the extension lines. See page 24 of the specification.

No antecedent basis is seen for the term, e.g., "said operating position" in line 23 of claim 1.

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-3, as best understood, are rejected under 35 U.S.C. § 102(b) as being anticipated by Sitrin (US Patent No. 4,875,385 which is corresponding to Japanese Utility Model # 6-40292 cited by applicant on October 16, 2001).

Regarding claim 1, Sitrin teaches a pedal device mounted on a bracket 10 fixed to a body of an automotive vehicle, and including a pedal arm 14f, 38b having an operating portion 22, 44 at a lower end thereof, and a position adjusting device operable to adjust a position of said operating

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portion 22, 44 in a longitudinal direction of the automotive vehicle when said pedal arm 14f, 38b is placed in a non-operated state thereof, said position adjusting device comprising:

a first member 12, 36 having a pair of guides 12d and 12e, 36f and 36g;

a second member 14, 38a disposed movably relative to said first member 12, 36 in a substantially vertical plane substantially parallel to said longitudinal direction, and having a pair of guide pieces 14c and 14d, or 38d/38g and 38h which are movable in engagement with said pair of guides 12d and 12e, 36f and 36g, respectively; and

a positioning device operable to establish a desired relative position between said first member 12, 36 and said second member 14, 38a, by moving said pair of guides 12d and 12e, 36f and 36g and said pair of guide pieces 14c and 14d, or 38d/38g and 38h relative to each other, said positioning device permitting said first and second members to maintain said desired relative position after said desired relative position is established,

wherein one (14, 38) of said first and second members has said operating portion 22, 44 and is movable relative to the other (12, 36) of said first and second members, to move said operating portion 22, 44 in said longitudinal direction, and

wherein said pair of guides 12d and 12e, 36f and 36g are formed such that an attitude of said operating portion 22, 44 changes as said operating portion 22, 44 is moved in said longitudinal direction (Figs. 2 and 4).

Claim 1 is anticipated by Sitrin because Sitrin teaches each positive claimed element. Ibid., claims 1-18. In addition, it is well established that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a

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prior art apparatus if the prior art teaches all the structural limitations of the claims. *Ex parte Masham*, 2 USPQ2d 1647 (BPAI 1987). Put in another fashion, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In other words, the functional limitations of a claim may not be given patentable weight where those limitations are inherent in a prior art reference. *In re Schreiber*, 44 USPQ2d 1429 (CAFC 1997).

Regarding claim 2, said pair of guides 12d and 12e, 36f and 36g consist of a pair of straight guides 12d and 12e, 36f and 36g which are positioned such that the extension lines which pass the midpoints of the lengths of the guides 32 and 34 intersect each other (see Exhibit 1 attached) such that said attitude of said operating portion 22, 44 changes as said operating portion 22, 44 is moved in said longitudinal direction as a result of a relative movement of said first and second members with said pair of guide pieces 14c and 14d, or 38d/38g and 38h being moved in engagement with said pair of straight guides 12d and 12e, 36f and 36g, respectively.

Regarding claim 3, said pair of straight guides (see Exhibit) are positioned such that a vertical position of said operating portion 22, 44 is lowered while an operating surface of said operating portion 22, 44 is gradually inclined upwards as said operating portion 22, 44 is moved in a rearward direction of the vehicle toward a seat of an operator of the vehicle.

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13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351 (a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

14. Claims 1, 2, 4, and 5, as best understood, is rejected under 35 U.S.C. 102(e) as being anticipated by Toelke et al. (US Patent No. 6,367,348 B1).

Regarding claim 1, Toelke teaches a pedal device mounted on a bracket 20 fixed to a body of an automotive vehicle, and including a pedal arm 10 having an operating portion 16 at a lower end thereof, and a position adjusting device operable to adjust a position of said operating portion 16 in a longitudinal direction of the automotive vehicle when said pedal arm 10 is placed in a non-operated state thereof, said position adjusting device comprising:

a first member 12, 102, etc. (Figs. 1-12) having a pair of guides 28 and 30, 28a and 28b, etc.;

a second member 14 disposed movably relative to said first member 12, 102, etc. in a substantially vertical plane substantially parallel to said longitudinal direction, and having a pair of guide pieces 36, 38, etc. which are movable in engagement with said pair of guides 28 and 30, 28a and 28b, etc., respectively; and

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a positioning device operable to establish a desired relative position between said first member 12, 102, etc. and said second member 14 by moving said pair of guides 28 and 30, 28a and 28b, etc. and said pair of guide pieces 36 and 38, etc. relative to each other, said positioning device permitting said first and second members to maintain said desired relative position after said desired relative position is established,

wherein one (14) of said first and second members has said operating portion 16 and is movable relative to the other (12, 102, etc.) of said first and second members, to move said operating portion 16 in said longitudinal direction, and

wherein said pair of guides 28, 30, etc. are formed such that an attitude of said operating portion 16 changes as said operating portion 16 is moved in said longitudinal direction.

Claim 1 is anticipated by Toelke because Toelke teaches each positive claimed element. Ibid., claims 1-20. See also *Ex parte Masham*, *In re Casey*, *In re Otto*, and *In re Schreiber*.

Regarding claim 2, Toelke teaches that said pair of guides consist of a pair of straight guides 28, 30 (Figs. 1-8), 28a and 28b (Fig. 9), and unnumbered in Figs. 11-12 which are positioned such that extension lines which pass the midpoints of the lengths of said straight guides are substantially parallel to each other such that said attitude of said operating portion 16 changes as said operating portion 16 is moved in said longitudinal direction as a result of a relative movement of said first and second members with said pair of guide pieces 36, 38, etc. being moved in engagement with said pair of straight guides 28, 30 (Figs. 1-8), 28a and 28b (Fig. 9), and unnumbered in Figs. 11-12, respectively.

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Note that Toelke teaches, e.g., in line 18 et seq., column 5 and line 55 et seq., column 12 that the guides in the first and third embodiments (Figs. 1-8 and 10-12) can be inclined slots like the second, fourth, and fifth embodiments (Figs. 9 and 13-18). Therefore, when one changes the orientation of the Toelke's guides in Toelke's first and third embodiments to become inclined like Toelke's guides in Toelke's fourth and fifth embodiments (Figs. 13-18), the guides become inclined in the same manner as shown in applicant's Figs. 1 and 2, consequently, Toelke's extension lines which pass the midpoints of the lengths of the guides intersect each other as claimed. See Exhibit 2. Consequently, claim 2 is anticipated by Toelke as expressly taught by Toelke.

Regarding claim 4, said second member 14 has said operating portion 16 and is movable relative to said first member 12, 102, etc. and said positioning device comprises a relative -movement device including a feedscrew 84, etc. (ibid., line 37 et seq., column 7) disposed on said first member 12, 102, etc. such that said feedscrew 84, etc. is parallel to one of said pair of straight guides 28, 30, etc., and rotatable about an axis thereof, and an internally threaded member 68 connected to one (38) of said guide pieces which engages said one (30) of said pair of straight guides, said internally threaded member 68 being held in engagement with said feedscrew 84, etc. and pivotable relative to said second member 14 about an axis perpendicular to said substantially vertical plane, and wherein said relative movement device is operable to rotate said feedscrew 84, etc. to move said second member 14 relative to said first member 12, 102, etc. and maintain said desired relative position between said first and second members after a rotary motion of said feedscrew 84, etc. is terminated.

Regarding claim 5, said pedal arm 10 includes said first (12, 102, etc.) and second (14) members, and said other (12, 102, etc.) of said first and second members which does not have said

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operating portion 16 is a pivotal arm 12, 102, etc. which is disposed pivotally about a support shaft 22, 24 (Fig. 3, *ibid.*, line 46 et seq., column 4), etc. supported by said bracket 20, said pedal arm 12, 102, etc. being pivoted about said support shaft 22, 24 when said pedal arm 12, 102, etc. is operated at said operating portion 16.


15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Cicotte (Fig. 5), Willemssen et al. (guide 22), Elton et al. (guide piece 26), Elton (guide 32), Redding et al. (guide piece 24b), Asano et al. (guide pieces 78 and 80), Willemssen (Figs. 1-3), Gmurowski et al. (Figs. 1-4), Allen et al. (guide piece 36), Brock (guide 34), Urset et al. (guides 96 and 106), and Burton et al. (guides 44 and 46).

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Luong whose telephone number is (703) 308-3221. The examiner can normally be reached on Monday-Thursday from 9:30 AM EST to 8:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bucci, can be reached on (703) 308-3668. The fax phone number for this Group is (703) 305-7687. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.

Luong

December 12, 2002



Vinh T. Luong
Primary Examiner